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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAN PAK YIP, MADHAV V. MARATHE, and DAVID
ANTHONY HUGHES

Appeal 2009-000025
Application 09/496,990
Technology Center 2400

Decided: September 24, 2009

Before JAMES D. THOMAS, ST. JOHN COURtenay, III, and JAMES
R. HUGHES, *Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-60. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' Invention

Appellants invented a connection admission control method and apparatus for controlling admissions of connection requests in a network. The apparatus includes (and the method utilizes) a first estimator that estimates an equivalent cell (bit) rate (ECR) based on a description of the connection request including a booking factor. (Spec. 4, ll. 9-24.)¹

Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. An apparatus to control connection admission for a connection request in a network, the apparatus comprising:
 - a first estimator to estimate an equivalent cell rate (ECR) based on description of the connection request, the description including a booking factor;
 - a second estimator to estimate a measured utilization factor for admitted connections in the network using measurements of data streams arriving at queues and the booking factor; and

¹ We refer to Appellants' Specification ("Spec."), Amended Appeal Brief ("App. Br.") filed October 22, 2007, and Reply Brief ("Reply Br.") filed February 13, 2008. We also refer to the Examiner's Answer ("Ans.") mailed December 13, 2007.

a controller coupled to the first and second estimators to generate an admission decision for the connection request comprising:

an addition request processor to generate the admission decision based on a request resource equal to a product of the ECR and the booking factor, and a resource allocation rule using a hierarchical resource organization, and a resource updater to update a resource reservation using the ECR, the booking factor, and the estimated measured utilization factor.

Reference

The Examiner relies on the following reference as evidence of unpatentability:

Aboul-Magd	US 6,490,249 B1	Dec. 3, 2002 (Filed Dec. 1, 1998)
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Rejections

The Examiner rejects claims 1-9, 12-21, 24-33, 36-45, 48-57, and 60 under 35 U.S.C. § 102(e) as anticipated by Aboul-Magd.²

² The Examiner rejects claims 1-60 under 35 U.S.C. § 102(e) as anticipated by Aboul-Magd in the Final Office Action mailed January 18, 2007. However, the Examiner withdraws the rejection of claims 10, 11, 22, 23, 34, 35, 46, 47, 58, and 59 in the Answer. (Ans. 3.) Although the Examiner expressly states the rejection is withdrawn for claims 10, 11, 22, 23, 34, 35, 45, 46, 57, and 58, we note that this disagrees with claims enumerated in the rejection. We also note that claims 46 and 58 are similar in scope to claims 10, 22, and 34, and claims 47 and 59 are similar in scope to claims 11, 23, and 35. We will therefore treat the rejection as withdrawn for claims 10, 11, 22, 23, 34, 35, 46, 47, 58, and 59, as enumerated in the rejection, and will not address Appellants' arguments concerning the withdrawn claims. Thus,

Appellants' Contentions

Appellants contend that the claimed subject matter is not anticipated by the Aboul-Magd reference because the reference does not disclose the limitation of “a first estimator to estimate an equivalent cell rate (ECR) based on description of the connection request, the description including a booking factor” as recited in exemplary claim 1. (App. Br. 10.)

Examiner's Findings and Conclusions

The Examiner finds that each of the claims is properly rejected. (Ans. 3-11.)

Rather than repeat the arguments of the Examiner or Appellants, we make reference to the Answer and the Briefs for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

ISSUES

Based on Appellants’ contentions, as well as the findings and conclusions of the Examiner, the issue before us is as follows:

Did Appellants establish that the Examiner erred in finding Aboul-Magd discloses each feature of Appellants’ invention, in particular, a first estimator to estimate an equivalent cell rate (ECR) based on a booking factor?

claims 10, 11, 22, 23, 34, 35, 46, 47, 58, and 59 are not before us on appeal. We make no determination as to the merits of the withdrawn claims.

FINDINGS OF FACT (FF)

Aboul-Magd Reference

1. Aboul-Magd describes a hybrid connection admission control (CAC) method and apparatus for regulating network traffic including both mathematical and measurement CAC functions. The hybrid CAC method estimates an equivalent bit rate (EBR) which is equivalent to an ECR. The hybrid CAC method also determines network utilization, and makes admission determinations based on an under-booking factor and an overbooking factor. (Abstract; col. 3, ll. 38-45; col. 4, l. 51 to col. 7, l. 58.)

2. Aboul-Magd does not explicitly disclose a first estimator estimating an ECR (EBR) based on a booking factor. The booking factors are utilized in the admission decision criterion conditions. (Col. 6, l. 12 to col. 7, l. 58; col. 9, l. 58 to col. 10, l. 32.)

PRINCIPLES OF LAW

Anticipation

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Under 35 U.S.C. § 102, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (citations omitted); see *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

ANALYSIS

Aboul-Magd describes a hybrid connection admission control (CAC) method including both mathematical and measurement CAC functions.

Aboul-Magd's hybrid CAC method estimates an equivalent bit rate (EBR), determines network utilization, and describes an under-booking factor and an overbooking factor utilized in admission determinations. (FF 1.) We find that an artisan would have understood Aboul-Magd to teach a booking factor and estimating an equivalent cell rate (ECR) as recited in Appellants' representative claim 1.

Appellants, however, contend that "Aboul-Magd does not disclose, either expressly or inherently, . . . a first estimator to estimate an equivalent cell rate (ECR) based on description of the connection request, the description including a booking factor" and "Aboul-Magd merely discloses two booking factors, an under-booking factor (ubf) and an over-booking factor (obf). The ubf is used for the measured utilization and the obf is used for the mathematical-based CAC. In contrast, the claimed invention uses a [single] booking factor for both the first and second estimators." (App. Br. 10) (internal citations omitted).)

The Examiner maintains that Aboul-Magd discloses the recited features, and that "[Aboul-Magd] discloses that the EBRc algorithm is the estimated traffic computed by the admission based on the description," and "disclose[s] that the description includes a definition about how much bandwidth for the connection the new connection is going to need or 'book.'" (Ans. 7) (citation omitted).) Accordingly, we decide the question of whether Aboul-Magd discloses each feature of Appellants' invention, in

particular, a first estimator to estimate an equivalent cell rate (ECR) based on a booking factor.

After reviewing the record on appeal, we agree with the Examiner that Aboul-Magd describes a booking factor, as well as estimating an equivalent cell rate (ECR). However, we agree with Appellants that Aboul-Magd does not describe a first estimator estimating an ECR based on a booking factor. To anticipate, a reference must disclose every element of a claim limitation arranged as described in the claim limitation. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed.Cir.1983)) (“the prior art reference – in order to anticipate under 35 U.S.C. § 102 – must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’”)

Aboul-Magd merely describes the individual elements of Appellants recited claim limitation without describing how the elements interact. In fact, Aboul-Magd appears to indicate that the booking factors are separate from, and not considered in the estimation of the EBR. The rejection of the other independent claims on appeal, claims 1, 13, 25, 37, and 49, suffers the same deficiency. The limitation of independent claim 1(discussed *supra*) – estimating an ECR based on a booking factor – is not disclosed by Aboul-Magd. This limitation is recited in commensurate form in each of the independent claims on appeal. Thus, Aboul-Magd does not anticipate Appellants’ independent claims 1, 13, 25, 37, and 49.

For the foregoing reasons, Appellants have persuaded us of error in the Examiner’s anticipation rejection of claims 1-9, 12-21, 24-33, 36-45, 48-

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57, and 60. Accordingly, we will not sustain the Examiner's rejection of the claims.

CONCLUSION OF LAW

On the record before us, we find that Appellants have established that the Examiner erred in finding Aboul-Magd discloses each feature of Appellants' invention, in particular, a first estimator to estimate an equivalent cell rate (ECR) based on a booking factor.

DECISION

We reverse the Examiner's rejections of claims 1-9, 12-21, 24-33, 36-45, 48-57, and 60 under 35 U.S.C. § 102(e).

REVERSED

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